

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

MACK SPINKS,

Defendant-Appellant.

UNPUBLISHED

March 6, 2007

No. 262793

Wayne Circuit Court

LC No. 04-011280-03

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

HAROLD LAMONT WOODS,

Defendant-Appellant.

No. 262938

Wayne Circuit Court

LC No. 04-011280-01

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

DEANDRE WOODS,

Defendant-Appellant.

No. 262939

Wayne Circuit Court

LC No. 04-011280-02

Before: Wilder, P.J., and Kelly and Borrello, JJ.

PER CURIAM.

Following a joint jury trial, defendants Harold Lamont Woods, DeAndre Woods, and Mack Spinks were each convicted of carrying a concealed weapon in a motor vehicle (CCW), MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b.

In addition, Harold was convicted of armed robbery, MCL 750.529, and felon in possession of a firearm, MCL 750.224f, DeAndre was also convicted of armed robbery, and Spinks was convicted of accessory after the fact, MCL 750.505, and felon in possession of a firearm. Harold was sentenced to concurrent prison terms of 10-1/2 to 20 years for the armed robbery conviction and one to five years each for the CCW and felon in possession convictions, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. DeAndre was sentenced to concurrent prison terms of 51 months to 15 years for the armed robbery conviction and one to five years for the CCW conviction, to be served consecutive to a two-year term for the felony-firearm conviction. Spinks was sentenced to 12 months' probation for the CCW, accessory after the fact, and felon in possession convictions, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. Each defendant appeals as of right. We affirm.

I. Underlying Facts

Defendants' convictions arise from an October 21, 2004, incident in which Steven Ray was robbed at gunpoint in the lobby of an apartment building in Detroit. According to Ray's trial testimony, the apartment building was locked at the time he entered it to visit his cousin. Ray let Harold and DeAndre into the building after Harold inquired about someone Ray did not know. Harold and DeAndre, who were both armed with guns, then robbed Ray. After Ray gave them his wallet, cell phone, and \$10 in cash, they left through the front door. Ray then exited the front door and spoke with Rufus Simpson, whom Ray then knew as "Red," about a van leaving the area. Ray chased the van on foot before joining Simpson and a woman in a vehicle to follow the van. They followed the van until a vehicle occupied by a Wayne State University police officer pulled up alongside them. Ray reported the robbery to the police officer, who stopped the van at a gas station. The van was occupied by Harold, DeAndre, and another man. The police recovered Ray's wallet and cell phone from the van.

According to Simpson's trial testimony, Simpson saw two men hurriedly leave the apartment building and get into a van before he spoke with Ray. Simpson identified Harold as one of the men at trial. He identified Spinks as the other man, but the prosecutor and Spinks's counsel later stipulated that Simpson did not see Spinks leave the apartment building. Simpson later testified that he only saw the two people for a split second.

James Twardesky, a Wayne State University police officer, testified that three men were in the van when he and a backup officer stopped it at the gas station. Spinks was the driver and Harold and DeAndre were passengers in the van. Ray's property and two guns were found in the van. The two guns were found behind a secret or fake speaker board located under a backseat. Another police officer from the Detroit Police Department testified that Spinks told him that the van belonged to his baby's mother. It was stipulated at trial that both Harold and Spinks had a prior felony conviction and had no right to possess a firearm.

II. Jury Selection

Defendants Harold and DeAndre Woods both argue that a new trial is required because the prosecutor engaged in purposeful discrimination during jury selection, contrary to *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d 69 (1986). We disagree.

“The purpose of *Batson* is to prevent discriminatory exclusions of veniremembers on the basis of race or gender.” *People v Knight*, 473 Mich 324, 351; 701 NW2d 715 (2005). Because the prosecutor offered race-neutral explanations for exercising peremptory challenges of African-American jurors, and the trial court ruled on the ultimate issue of whether the prosecutor intended to exclude the jurors based on race, we shall presume that both Harold and DeAndre made out a prima facie case of discrimination under *Batson*. See *Knight, supra* at 337-338.

We review de novo whether the prosecutor’s proffered explanation for the peremptory challenges violated the equal protection clause as a matter of law. *Knight, supra* at 343. Unless race discrimination is inherent in a prosecutor’s explanation, the reasons offered are deemed to be race neutral. *Id.* at 337. Here, Harold’s counsel stated that the prosecutor exercised four peremptory challenges to excuse prospective African-American jurors, but specifically relied on only two of the challenges as the basis for his *Batson* challenge. The prosecutor explained that he excused the prospective female juror because the juror’s daughter was recently convicted of murder and the juror did not think that the system gave her daughter a “fair shake.” The prosecutor explained that he excused the prospective male juror because the juror had an engineering-type of occupation and, for the most part, he preferred not to have engineers on juries.

Occupation is a permissible basis for defending a *Batson* challenge. See *Hall v Luebbers*, 341 F3d 706, 713 (CA 8, 2003). Because both of the prosecutor’s explanations are race neutral as a matter of law, we turn to the third step of *Batson* concerning whether, as a matter of fact, the prosecutor’s proffered explanation constituted a mere pretext to discriminate and whether the opponent of the peremptory challenge proved purposeful discrimination. *Knight, supra* at 344. We review the trial court’s determinations for clear error. *Id.* at 344-345.

We find no clear error in the trial court’s determination that the prosecutor did not exclude the jurors based on race. The record amply supports the trial court’s finding that that prospective female juror was hesitant regarding her ability to be fair. Although she stated that she could be fair, she also indicated, “at the same time, I think it’s a bit soon” and that her daughter’s situation “probably was different.”

Further, we find no basis for disturbing the trial court’s acceptance of the prosecutor’s occupation-based explanation for excusing the prospective male juror, who indicated that he inspects bridges and roads for the state highway department. The prosecutor had already exercised an earlier peremptory challenge to excuse a male juror who indicated that he was an engineer. The fact that another prospective male juror, whose employment as a computer systems manager could also be viewed as an engineering-type of occupation, was excused by DeAndre’s counsel, rather than the prosecutor, does not demonstrate clear error. The race of that male juror is not clear from the record. But even assuming that he was not African-American, it is unknown from the record whether the prosecutor would have used a later peremptory challenge to excuse him. At most, the record indicates that the trial court moved on to DeAndre counsel’s challenges immediately after ruling on the prosecutor’s request to excuse a different prospective juror peremptorily or for cause because her mother was hospitalized.

In any event, as indicated by the trial court, an attorney may prefer not to have an individual on the jury who is engaged in a precision type of occupation. Because the trial court

did not clearly err in finding that the prosecutor did not use occupation as a pretext for purposeful discrimination based on race, we uphold its decision to reject the *Batson* challenge.

III. DeAndre Woods's Other Issues

DeAndre argues that the trial court erred by permitting the prosecutor to introduce evidence that he engaged in acts of witness intimidation and obstruction of justice. DeAndre argues that this evidence was inadmissible under MRE 404(b). In a related argument raised in a supplemental brief, DeAndre argues that the admission of this evidence requires reversal because the prosecutor did not give proper notice under MRE 404(b) or amend the information to add charges of obstructing justice or tampering with a witness.

We review a trial court's decision to admit evidence for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). But preliminary questions of law are reviewed de novo. *Id.* at 488. To properly preserve an evidentiary issue for appeal, a defendant must timely object, or move to strike the evidence, specifying the same ground for objection argued on appeal. MRE 103(a)(1); *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003); *People v Bauder*, 269 Mich App 174, 178; 712 NW2d 506 (2005). Absent a proper objection, we review the defendant's claim of error under the plain error doctrine set forth in *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999). *Jones, supra*; see also MRE 103(d).

In this case, on the day following jury selection, each defendant moved for a mistrial based on information provided by the prosecutor about Ray and Simpson giving possible perjured testimony at the preliminary examination. DeAndre's counsel also moved for a mistrial because DeAndre was arrested the day before without a warrant in connection with possible obstruction of justice. Although the matter was still under investigation, the prosecutor proposed to offer evidence at trial that Ray did not identify DeAndre as one of the men who robbed him and that Simpson falsely identified Spinks as one of the robbers at the preliminary examination because DeAndre told them not to testify against him. The trial court found no basis for a mistrial. It declined to anticipate what might happen at trial, but indicated that MRE 801 would be pertinent to evidence that a witness made a prior inconsistent statement and that the evidence would not be admissible unless it was relevant.

DeAndre's counsel did not make a record of an objection based on MRE 404(b) until after completing his cross-examination of Ray. Ray had testified on direct examination that he did not identify DeAndre at an earlier hearing because DeAndre begged him not to go to court and he felt intimidated. Ray also testified that DeAndre called him the day before the trial began. After his cross-examination of Ray, DeAndre's counsel argued that "there's a possible exception" under MRE 404(b), but that the evidence was inappropriate because the prosecutor did not file notice under MRE 404(b) or amend the information to add new crimes.

We note that DeAndre's counsel did not object when the prosecutor later elicited testimony from Simpson that DeAndre approached him to tell him not to go to court before he identified Spinks at an earlier hearing as one of the men he saw leave the apartment building. Thus, the record discloses only one specific objection to the evidence to support DeAndre's argument that he moved to exclude the evidence under MRE 404(b), which was limited to DeAndre's argument that proper notice was not provided. Although the trial court did not

specifically rule on the objection, we find no basis for disturbing its decision to allow the evidence.

DeAndre's objection based on MRE 404(b) was untimely. "[T]o be timely, an objection should be interposed between the question and the answer." *Jones, supra* at 355. Even if we treated DeAndre's objection as a motion to strike the testimony, we would not find that the trial court abused its discretion in failing to act on the objection. MRE 404(b) is implicated if the evidence involves an intermediate character-to-conduct inference. *People v VanderVliet*, 444 Mich 52, 64; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). Evidence can be relevant and admissible independent of MRE 404(b). See *Lukity, supra* at 499 (MRE 404(b) not implicated by the prosecutor's cross-examination of a defendant regarding his marijuana use under MRE 405(a) in response to the defendant's testimony); *People v Hall*, 433 Mich 573, 580-583; 447 NW2d 580 (1989) (Boyle, J.) (evidence linking a defendant to a shotgun admissible under MRE 401, without reference to MRE 404(b), to establish that the defendant committed robbery).

There is nothing in the record to indicate that the trial court found MRE 404(b) applicable to the challenged evidence that DeAndre contacted prosecution witnesses, nor are we persuaded that MRE 404(b) applies to the evidence. The evidence was clearly relevant to the credibility of Ray's in-court identification of DeAndre as one of the two men who robbed him, inasmuch as it had a tendency to explain why Ray failed to identify DeAndre at an earlier court hearing. Relevant evidence is "evidence that is material (related to any fact that is of consequence to the action) and has probative force (any tendency to make the existence of a fact of consequence more or less probable than it would be without the evidence)." *People v Sabin (After Remand)*, 463 Mich 43, 57; 614 NW2d 888 (2000); see also MRE 401. "If a witness is offering relevant testimony, whether the witness is truthfully and accurately testifying is itself relevant because it affects the probability of the existence of a consequential fact." *People v Mills*, 450 Mich 61, 72; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995).

In addition, the evidence of DeAndre's efforts to persuade witnesses not to testify, if believed, demonstrates consciousness of guilt. It is well established that "evidence of a defendant's subsequent efforts to influence or coerce the witnesses against him is admissible where such activity demonstrates a consciousness of guilt on the part of the defendant." *People v Mock*, 108 Mich App 384, 389; 310 NW2d 390 (1981). It was for the jury to determine the significance of DeAndre's conduct in conjunction with the other evidence produced at trial. *People v Sholl*, 453 Mich 730, 740; 556 NW2d 851 (1996), reh den 560 NW2d 630 (1997).

Having failed to demonstrate that MRE 404(b) was implicated by the challenged evidence, it is unnecessary to consider DeAndre's argument that the evidence should have been excluded because proper notice was not provided. And while the evidence must still comply with other evidentiary rules, DeAndre failed to preserve a specific challenge to the evidence based on MRE 401 or MRE 403. Further, we find no plain error in the admission of the evidence. As previously indicated, the evidence was relevant independent of MRE 404(b), and it is not apparent that the relevancy of the evidence was substantially outweighed by the danger of unfair prejudice. *Sabin, supra* at 58; *Mills, supra* at 75-76.

Further, DeAndre has not established that the prosecutor was required to amend the information to offer evidence of his efforts to influence witnesses. Under Michigan law, a

criminal prosecution is initiated by grand jury indictment or an information predicated on a complaint and warrant. *People v Glass*, 464 Mich 266, 276-278; 627 NW2d 261 (2001). Although an information is presumed to be framed with reference to facts disclosed at a preliminary examination following the arrest, *People v Hunt*, 442 Mich 359, 363; 501 NW2d 151 (1993), an information is adequate if it provides reasonable notice of the charges that a defendant must defend against at trial, *People v Darden*, 230 Mich App 597, 600; 585 NW2d 27 (1998). See also MCL 767.45(1)(a) and (b) (information shall contain the nature and time of the offense). Here, the challenged evidence regarding DeAndre's conduct does not broaden or otherwise modify the information, which charged DeAndre with armed robbery, CCW, and felony-firearm. Thus, there was no procedural impediment to the prosecutor offering evidence of DeAndre's efforts to influence witnesses.

Turning to DeAndre's claim that the trial court erred by not sua sponte giving a limiting instruction on the use of other-acts evidence in accordance with CJI2d 4.11, we hold that DeAndre failed to preserve this issue because he did not request any additional instruction when given an opportunity to do so by the trial court after the court instructed the jury. We review unpreserved claims of instructional error for plain error under *Carines, supra*. We disagree with the prosecutor's argument that this issue should be considered waived. Unlike *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002), and *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2001), DeAndre's counsel did not specifically indicate that he had no objection to the court's instructions to the jury. See *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000), reh den 463 Mich 1210 (2000).

DeAndre has not shown that the trial court plainly erred by not sua sponte giving a limiting instruction on the use of other-acts evidence in accordance with CJI2d 4.11. As previously indicated, the evidence of DeAndre's efforts to influence witnesses was admissible independent of MRE 404(b) because it was relevant to Ray's credibility and DeAndre's consciousness of guilt. Even if some form of limiting instruction regarding the use of the evidence would have been appropriate, MRE 105 only requires that a trial court restrict evidence to its proper scope and instruct the jury accordingly upon request.

DeAndre's reliance on *People v McCoy*, 392 Mich 231; 220 NW2d 456 (1974), is misplaced because the challenged evidence does not involve accomplice testimony. Further, *McCoy* was overruled in *People v Young*, 472 Mich 130, 143; 693 NW2d 801 (2005), so as to subject an unpreserved claim that a cautionary accomplice instruction should have been given to appellate review under the plain error doctrine.

As in *Young, supra* at 143, it is not clear or obvious that a limiting instruction on the use of the challenged evidence was required in this case. In general, jury instructions are adequate if they fairly present the issues to be tried and sufficiently protect a defendant's rights. *People v Aldrich*, 246 Mich App 101, 124-125; 631 NW2d 67 (2001), lv den 465 Mich 952 (2002). Here, the relevancy of the evidence to the charges was exposed through the prosecutor and defense counsels' questioning of the witnesses and closing arguments. In particular, the prosecutor argued in his closing argument that Ray did not identify DeAndre as one of the robbers at the earlier hearing because he was intimidated by DeAndre, but made a credible identification of DeAndre at trial. The prosecutor argued that Simpson's identification of Spinks as one of the robbers was simply not credible. DeAndre has not established any misuse of the evidence by the

prosecutor to support his position that the trial court should have sua sponte provided a limiting instruction to the jury.

We further note that the trial court instructed the jury regarding a number of factors to be considered in determining a witness's credibility and the reliability of identification testimony, and that the attorneys' arguments were only meant to help the jury understand the evidence and each side's legal theories. Examined in light of the evidence and arguments presented to the jury, it is not apparent that a specific instruction limiting the use of the evidence regarding DeAndre's efforts to influence witnesses was necessary to fairly present the issues to be tried or to protect DeAndre's rights.

We reject DeAndre's alternative claim that his counsel's failure to request a limiting instruction constituted ineffective assistance of counsel. Our review is limited to mistakes apparent from the record because DeAndre failed to move for a *Ginther*¹ hearing or a new trial on this basis. *People v Rodgers*, 248 Mich App 702, 713-714; 645 NW2d 294 (2001). "To demonstrate ineffective assistance of counsel, defendant must show that his attorney's conduct fell below an objective standard of reasonableness and that the representation so prejudiced defendant that he was deprived of a fair trial." *People v Gonzalez*, 468 Mich 636, 644; 664 NW2d 159 (2003). "Effective assistance is presumed, and the defendant bears a heavy burden of proving otherwise." *Rodgers, supra* at 714.

Because it is not apparent that a limiting instruction was necessary to fairly present the issues to be tried or to protect DeAndre's rights, we can presume that DeAndre's counsel's failure to request some form of limiting instruction was a matter of trial strategy. DeAndre's counsel's strategy is apparent from his closing argument that Ray did not give credible testimony that DeAndre had any contact with him to influence his testimony and that Ray made a false identification of DeAndre at trial. DeAndre's counsel might have concluded that a limiting instruction would damage the defense by highlighting permitted uses of evidence that he claimed was not credible. We will not second-guess counsel on matters of trial strategy. *Gonzalez, supra* at 643-645. Therefore, DeAndre has failed to establish that he was denied the effective assistance of counsel.

Next, DeAndre argues that the evidence was insufficient to establish beyond a reasonable doubt that he committed armed robbery, as a principal or an aider and abettor. DeAndre raised this issue at trial in a motion for a directed verdict, which the trial court denied. "When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *Aldrich, supra* at 122.

DeAndre's challenge to the sufficiency of the evidence for the armed robbery conviction rests on the assumption that Ray's testimony was not credible. This argument fails as a matter of

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

law. It was the jury's role to determine the credibility of Ray's testimony. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

DeAndre's cursory argument that the evidence was insufficient to support his felony-firearm conviction is not properly before this Court because DeAndre failed to set forth this issue in the statement of the questions presented, as required by MCR 7.212(C)(5). *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999). Further, "[a]n appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). In any event, we note that the felony-firearm conviction was predicated on the armed robbery crime. In light of Ray's testimony that both robbers were armed with a gun and Officer Twardesky's identification of the two guns seized from the van, we reject DeAndre's assertion that no evidence linked him to a firearm.

To the extent that DeAndre argues that a new trial should be granted because the armed robbery verdict is against the great weight of the evidence, this argument was not preserved for appeal because DeAndre failed to move for a new trial. Our review is limited to plain error affecting DeAndre's substantial rights under *Carines*, *supra*. See *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). Although DeAndre challenged Ray's credibility at trial, and Ray's testimony that DeAndre participated in the armed robbery was impeached to some extent, it is not apparent from the record that Ray's testimony was so far impeached that it was deprived of all probative value or that the jury could not have believed it, or that Ray's testimony contradicted indisputable physical facts or defied physical realities. Therefore, DeAndre has failed to establish plain error affecting his substantial rights. *Id.* at 219; see also *People v Lemmon*, 456 Mich 625, 642-647; 576 NW2d 129 (1998).

Finally, because DeAndre did not move for a new trial based on newly discovered evidence, he failed to preserve his claim that a new trial should be granted on this ground. Our review of this issue is limited to plain error affecting DeAndre's substantial rights under *Carines*, *supra* at 763. See *People v Cox*, 268 Mich App 440, 450; 709 NW2d 152 (2005).

For a new trial to be granted on the basis of newly discovered evidence, a defendant must show that: (1) "the evidence itself, not merely its materiality, was newly discovered"; (2) "the newly discovered evidence was not cumulative" (3) "the party could not, using reasonable diligence, have discovered and produced the evidence at trial" and (4) the new evidence makes a different result probable on retrial. *People v Johnson*, 451 Mich 115, 118 n 6; 545 NW2d 637 (1996); MCR 6.508(D). [*People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003).]

Here, without an appropriate motion in the trial court, we have no record on which to determine if any newly discovered evidence exists to warrant a new trial. At most, the record indicates that the trial was briefly recessed after DeAndre's counsel rested without presenting any evidence. After the recess, DeAndre's counsel requested guidance from the trial court because he "just learned that one of the defendants was involved in this and it was not my client. And that also an individual was with this other individual and it was not my client." DeAndre's counsel further explained that he wanted to at least make a record that he learned of an admission by a defendant other than DeAndre. DeAndre's counsel denied having any personal knowledge

of who committed the crime. The trial court found that DeAndre counsel's lack of personal knowledge should end the matter.

A trial court has discretion to order a mistrial based on manifest necessity, *People v Lett*, 466 Mich 206, 210-220; 644 NW2d 743 (2002), or to reopen proofs for admissible evidence, *People v Herndon*, 246 Mich App 371, 419-420; 633 NW2d 376 (2001). But in this case, the record is insufficient to conclude that DeAndre's counsel had admissible exculpatory evidence. DeAndre does not present any affidavit on appeal to show this Court that his trial counsel possesses exculpatory evidence. DeAndre had an opportunity to move for a new trial on the grounds of newly discovered evidence, and to ask for an evidentiary hearing based on newly discovered evidence (and for appointment of a new attorney), but he failed to do so. DeAndre also had an opportunity below to make a motion for a *Ginther* hearing, to contend that he received ineffective assistance of counsel based on his attorney failing to move for an evidentiary hearing based on newly discovered evidence. But again, DeAndre failed to do so. Given these failures to make a record, this Court has no record of newly discovered evidence. Since there is no record of what DeAndre's attorney would say, this Court must deny relief.

Further, DeAndre has not supported his position that his counsel should have withdrawn from the case and testified as a witness. In general, "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." MRE 602. Hearsay is inadmissible except as provided by the evidentiary rules. MRE 802. We will not search for authority to support DeAndre's position that his counsel could have provided admissible testimony in support of his defense. *Kelly*, *supra*. Further, DeAndre's reliance on *People v Mechura*, 205 Mich App 481, 483; 517 NW2d 797 (1994), is misplaced because his counsel did not claim to have evidence that a witness lied at trial, but only knowledge of a statement made by a codefendant.

In conclusion, it is not apparent that the trial court plainly erred by not sua sponte taking any action, in response to DeAndre counsel's request for guidance, other than to allow DeAndre's counsel to make a record. Additionally, limiting our review to the record, it is not apparent that DeAndre is entitled to a new trial based on newly discovered evidence. We reject DeAndre's alternative request for a remand for the purpose of conducting an evidentiary hearing regarding this matter. Although a remand may be appropriate where there is newly discovered evidence, no such evidence has been shown in this case. Cf. *People v Dixon*, 217 Mich App 400, 409-410; 552 NW2d 663 (1996) (remand denied where the defendant failed to establish newly discovered evidence); see also MCR 7.211(C)(1)(a) (motion to remand must be supported by an affidavit or other offer of proof regarding facts to be established). Accordingly, we find no plain error in the trial court's failure to order a new trial, or a mistrial, or to reopen proofs.

IV. Spinks's Issues

Defendant Spinks argues that the evidence was insufficient to sustain his convictions and, in particular, was insufficient to show that he knew that the main perpetrators intended to commit the robbery, that they possessed guns, or that they hid the guns in the van. Because Spinks has not addressed the elements of each of the offenses relevant to this argument, with citation to supporting authority, we deem this issue abandoned. *Kelly*, *supra* at 640-641.

In passing, we note that an accessory after the fact is “one who, with knowledge of the principal’s guilt, renders assistance to hinder the detection, arrest, trial, or punishment of the principal.” *People v King*, 271 Mich App 235, 239; 721 NW2d 271 (2006). Although there was no direct evidence of Spinks’s knowledge of Harold’s and DeAndre’s guilt, circumstantial evidence, as well as all reasonable inferences drawn therefrom, may be sufficient to establish knowledge. *People v Hardiman*, 466 Mich 417, 428-429; 646 NW2d 158 (2002). The circumstantial evidence in this case, viewed in a light most favorable to the prosecution, was sufficient for the jury to find beyond a reasonable doubt that Spinks knew that Harold and DeAndre committed a robbery and were armed with guns when he provided them with a means to escape and a secret compartment for hiding the guns in the van he was driving.

The circumstantial evidence was also sufficient to support the CCW and felon in possession convictions, and the felony-firearm conviction predicated on Spinks’s possession of a firearm during the commission of the accessory after the fact or felon in possession crimes. (Tr III, p 136 [jury instructions for felony-firearm]). Although mere presence of a weapon in a motor vehicle is insufficient to establish that it was carried or possessed by an occupant, constructive possession is adequate and may be established by circumstantial evidence. See *People v Burgenmeyer*, 461 Mich 431, 437-438; 606 NW2d 645 (2000), reh den 461 Mich 1289 (2000) (a defendant has constructive possession of a firearm if the location is known and reasonably accessible to the defendant), and *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982) (constructive possession or carrying of a weapon may be established by circumstantial evidence). Viewed in a light most favorable to the prosecution, the evidence that the police found the guns in a secret compartment in the van, which Spinks controlled and admitted belonged to someone he knew, was sufficient to establish that Spinks constructively possessed the guns. (Tr II, p 163; Tr III, p 38.) Cf. *People v Beard*, 171 Mich App 538, 545-547; 431 NW2d 232 (1988), lv den 432 Mich 912 (1989) (felony-firearm conviction proper where the defendant concealed a gun used by a principal during the commission of an accessory-after-the-fact crime); see also *People v Calloway*, 469 Mich 448; 671 NW2d 733 (2003) (felon in possession of a firearm may be used as the predicate felony for felony-firearm).

Finally, Spinks also failed to preserve his claim that the jury verdict is against the great weight of the evidence because he failed to raise this issue in a motion for a new trial. *Musser*, *supra* at 218. Further, having considered Spinks’s cursory argument regarding this matter, we are not persuaded that plain error occurred. *Id.* at 219.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello